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Aktuelle Südostasienforschung / Current Research on South-East Asia

***The Association of Southeast Asian Nations' (ASEAN)
Conflict Management Approach Revisited:
Will the Charter Reinforce ASEAN's Role?***

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The main aim of this study is to assess the role played by the Association of Southeast Asian Nations (ASEAN) in the management and resolution of disputes between its member-states in the South-East Asian region. The ASEAN approach to conflict management is outlined and the context in which it has developed is presented. The achievements and challenges that ASEAN has faced and is still facing in the field of conflict management are identified. ASEAN's contribution to conflict management in the South-East Asian region is recognized, although the nature of the contribution and the role played by the Association is debated. ASEAN's model and approach to conflict and dispute management and the possible impact of the approach on the conflict situation in the South-East Asian region are examined from three main dimensions: (1) the core elements of the approach; (2) the role played by the Association in terms of conflict management; (3) the possible impact of the ASEAN approach in managing disputes among its member-states. The possible impact of recent developments within ASEAN – the ASEAN Charter in particular – is analyzed in assessing the role that the Association can play in promoting conflict management.

Keywords: *Association of Southeast Asian Nations, Conflict Management Mechanisms, ASEAN Charter, Treaty of Amity and Cooperation (TAC)*

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Hauptziel dieser Studie ist, zu untersuchen, welche Rolle die Vereinigung südostasiatischer Nationen (ASEAN) im Management und in der Bewältigung von Konflikten zwischen ihren Mitgliedstaaten spielt. ASEANs Verständnis von Konfliktmanagement und Streitschlichtung wird dargestellt – ebenso der Hintergrund, vor dem es entstand. Weiters werden ASEANs Errungenschaften wie Herausforderungen im Konfliktmanagement behandelt. Im Allgemeinen sind ASEANs Erfolge in Südostasien anerkannt. ASEANs Beitrag und ihre Rolle dabei wird jedoch debattiert. In diesem Artikel wird das ASEAN-Modell für Konfliktmanagement und Streitschlichtung sowie die möglichen Auswirkungen auf Konfliktsituationen in Südostasien aus drei Blickwinkeln analysiert: (1) Kernelemente des ASEAN-Ansatzes; (2) die Rolle ASEANs im Management von Konflikten zwischen Mitgliedstaaten; (3) mögliche Implikationen des ASEAN-Modells auf regionale Konflikte. Potenzielle Auswirkungen jüngerer Entwicklungen innerhalb ASEANs, vor allem der ASEAN Charter, werden analysiert, um die Rolle, die ASEAN im regionalen Konfliktmanagement spielen kann, besser abschätzen zu können.

Schagworte: Vereinigung südostasiatischer Nationen, Konfliktmanagement-Mechanismen, ASEAN-Charter, Freundschafts- und Kooperationsabkommen (TAC)

Purpose and structure

The main purpose of this study is to assess the role played by the Association of Southeast Asian Nations (ASEAN) in the management and resolution of disputes between its member-states in the South-East Asian region. The ASEAN approach to conflict management is outlined and the context in which it has developed is presented. The achievements and challenges that ASEAN has faced and is still facing in the field of conflict management are identified. ASEAN's model and approach to conflict and dispute management and the possible impact of the approach on the conflict situation in the South-East Asian region are examined from three main dimensions: first, the core elements of the approach, second, the role played by the Association in terms of conflict management, and, third, the possible impact of the ASEAN approach in managing disputes among its member-states. The possible impact of recent developments within ASEAN – the ASEAN Charter in particular – is analysed in assessing the role that the Association can play in promoting conflict management.

The study is structured in the following way. First, the mechanisms of the ASEAN approach for conflict management are outlined including the ASEAN Charter. Second, the role of ASEAN, the attitude of member-states and the degree of success of ASEAN are outlined. Third, some concluding remarks are outlined relating to ASEAN and conflict management.

Mechanisms for conflict management within ASEAN

Introduction

The mechanisms for conflict management are drawn from seven key ASEAN documents: The 'ASEAN Declaration' (Bangkok Declaration), the 'Declaration of ASEAN Concord', the 'Treaty of Amity and Cooperation' (TAC), the 'Rules of Procedure of the High Council of the Treaty of Amity and Cooperation in Southeast Asia'; the 'Declaration of ASEAN Concord II' (Bali Concord II), the 'ASEAN Security Community Plan of Action', and the 'Charter of the Association of Southeast Asian Nations' (ASEAN Charter). These key documents are examined in chronological order based on the dates of adoption by ASEAN.

The ASEAN Declaration

The ASEAN Declaration, adopted on August 8, 1967, spells out the overall goals and aims of ASEAN and set the stage for a process aiming at defining the way in which the Association should function and the mechanisms by which the goals and aims of the Association should be achieved. The references to conflict management in the Declaration are general in character as can be seen from the expressed desire to "establish a firm foundation for common action to promote regional cooperation in South-East Asia in the spirit of equality and partnership and thereby contribute towards peace, progress and prosperity in the region" (ASEAN Declaration).

Also in the part relating to the aims and purposes of the Association the paragraph dealing specifically with the promotion of 'regional peace' is general rather than specific in its wording, as can be seen in the following: "To promote regional peace and stability through abiding respect for justice and the rule of law in relationship

among countries of the region and adherence to the principles of the United Nations Charter” (ASEAN Declaration).

The Declaration of ASEAN Concord

The evolution that followed during the so-called ‘formative years’²; that is 1967 to 1976, led to the signing of the Declaration of ASEAN Concord on February 24, 1976, in connection with the First Summit Meeting of ASEAN held in Bali.

The Declaration of ASEAN Concord relates to the member-states of ASEAN. The Declaration of ASEAN Concord contains both general principles relating to the overall goals of the Association and principles relating to the specific goal of managing disputes and expanding co-operation among the member-states. One of the stated overall objectives is the ambition to establish a Zone of Peace, Freedom and Neutrality (ZOPFAN) in South-East Asia.³ Emphasis is also put on the respect for the principles of “self-determination, sovereign equality and non-interference in the internal affairs of nations” (ASEAN Concord 1).

The Treaty of Amity and Cooperation (TAC)

The TAC was also adopted on February 24, 1976, in Bali. It provides specific guidelines in the field of conflict management, particularly so in relation to the peaceful settlement of disputes. According to Article 18 the TAC “shall be open for accession by other States in Southeast Asia”; that is in addition to the five founding members of ASEAN, which are Indonesia, Malaysia, the Philippines, Singapore, and Thailand. In Chapter I, dealing with ‘Purpose and Principles’, Article 2 outlines the fundamental principles that should guide the relations between the signatories to the Treaty. The principles are:

- a. *Mutual respect for the independence, sovereignty, equality, territorial integrity and national identity of all nations;*

2 Askandar argues that the First Summit Meeting marked the end of the ‘formative stage’ of ASEAN regionalism and that the signing of the Declaration of ASEAN Concord and the TAC marked the beginning of the ‘second phase’ (Askandar, 1994, p. 68).

3 The ASEAN member-states adopted the Kuala Lumpur Declaration on November 27, 1971. It called for the creation of a ZOPFAN in South-East Asia. The Declaration of ZOPFAN states ASEAN’s peaceful intentions and its commitment to build regional resilience free from interference from external powers (Zone of Peace).

- b. *The right of every State to lead its national existence free from external interference, subversion of coercion;*
- c. *Non-interference in the internal affairs of one another;*
- d. *Settlement of differences or disputes by peaceful means;*
- e. *Renunciation of the threat or use of force;*
- f. *Effective co-operation among themselves (TAC).*

The principles include three main factors for managing inter-state relations; non-interference in the internal affairs of other countries, peaceful settlement of disputes, and, overall co-operation.

In Chapter III, dealing with 'Co-operation', the areas in which mutual co-operation can be established and expanded are outlined and the linkages between co-operation, peaceful relations and non-interference are displayed. The latter is most evidently shown in Article 12, which states that, the signatories:

in their efforts to achieve regional prosperity and security, shall endeavour to cooperate in all fields for the promotion of regional resilience, based on the principles of self-confidence, self-reliance, mutual respect, co-operation and solidarity which will constitute the foundation for a strong and viable community of nations in Southeast Asia (TAC).

In Chapter IV, devoted to 'Pacific Settlement of Disputes', Article 13 outlines the way in which the signatories should behave in situations in which there is a risk that disputes may arise or have arisen. It stipulates that the signatories "shall have the determination and good faith to prevent disputes from arising. In case disputes on matters directly affecting them shall refrain from the threat or use of force and shall at all times settle such disputes among themselves through friendly negotiations" (TAC).

Article 14 is devoted to the creation and envisaged role of a 'High Council'. The Council shall be made up of a representative at the ministerial-level from each of the signatories. The role of the Council should be to take "cognisance" of existing disputes or situation, which could potentially threaten regional "peace and harmony" (TAC). The High Council is envisaged as "a continuing body", i.e. it should have been established in 1976.

Article 15 deals with the mediating role of the Council, a role that it can assume in the event that no solution to a dispute is reached through 'direct' negotiation between the parties to the dispute. The Council can assume the role as mediator by recommending to the parties to a dispute appropriate means of settlement; i.e. good offices, mediation, inquiry, or conciliation. It can also 'constitute itself into a

committee' of mediation, inquiry or conciliation (TAC).

Article 16 displays some limitations to the mediating functions of the Council by stating that the provisions of Articles 14 and 15 shall apply to a dispute only if the parties to the dispute agree to their 'application'. Literally this implies that only the High Council can decide on mediating in a dispute if the parties agree to the 'application' of the provisions in Articles 14 and 15, but that the parties to the dispute cannot bring the matter to the High Council. However, among some officials and researchers in the South-East Asian region another interpretation has been put forward, namely that the High Council can only assume role of mediator in a dispute if the parties involved agree on bringing it to the Council.⁴ Article 16 also states that signatories who are not parties to such a dispute can offer assistance to settle it and the parties to the dispute should be "well disposed towards such offers" (TAC).

The Rules of Procedure of the High Council

On July 23, 2001, in connection with the 34th ASEAN Ministerial Meeting (AMM) held in Hanoi, the member-states of ASEAN adopted the Rules of Procedure of the High Council of the Treaty of Amity and Cooperation in Southeast Asia. The rules of procedure consist of ten 'Parts' encompassing 25 'Rules' (Rules of Procedure). In the following the most relevant provisions will be outlined with a focus on the dispute settlement procedure.

In Part I, 'Purpose', Rule 1, it is stated that in the "event of" a conflict between any provision of the rules of procedure and a provision of the TAC the latter should prevail (Rules of Procedure). In Part III, 'Composition', Rule 3, Paragraph a, it is stated that the High Council shall comprise one representative at ministerial level from each of the "High Contracting Parties" that are South-East Asia countries. According to Rule 5 there shall be a Chairperson of the High Council. The Chairperson shall be the representative of the member-state that holds the Chair of the Standing Committee of ASEAN. Or "such other" representative of a member-state of ASEAN "as may be decided by the High Council in accordance with these rules" (Rules of Procedure).

In Part IV, 'Initiation of Dispute Settlement Procedure', Rule 6, Paragraph 1, it is

⁴ This can be exemplified by the fact that this interpretation was prevalent in the author's discussions with officials and researchers in Malaysia in August 1998.

stipulated that the High Council “may take cognisance over a dispute or a situation provided for in Articles 14 to 16 of the Treaty”, that is the TAC. In Paragraph 2 it is stated that the “dispute settlement procedure” of the Council “shall be invoked only by a High Contracting Party which is directly involved in the dispute in question”. According to Rule 7, Paragraph 1, a High Contracting Party seeking to invoke the dispute settlement procedures must do so by written communication through diplomatic channels to the Chairperson of the Council and to the other High Contracting Parties. Rule 8 stipulates that once such written communication has reached the Chairperson, the latter shall seek written confirmation from all other parties to the dispute that they “agree on the application of the High Council’s procedure as provided for in Article 16 of the Treaty”. Of crucial importance in this context is Rule 9 in which it is stipulated that: “Unless written confirmation has been received from all parties to the disputes in accordance with Rule 8, the High Council may not proceed further on the matter.” If the precondition set forward in Rule 9 is met then the High Council can proceed with the implementation of the dispute settlement procedure. If this is successful and the Council is to make a decision then Part VII – ‘Decision-making’, Rule 19, stipulates that the Council has to take all its decisions by consensus at “duly” convened meetings (Rules of Procedure).

The Declaration of ASEAN Concord II (Bali Concord II)

The Declaration ASEAN Concord II, adopted on October 7, 2003, in connection with the ninth ASEAN Summit held in Bali, displays the continuity in the development of collaboration within ASEAN. In its preamble part it is confirmed that the fundamental values and principles are still very much in evidence as displayed by the fact that it is stated that the member-states are: “Reaffirming the fundamental importance of adhering to the principle of non-interference and consensus in ASEAN Cooperation” (ASEAN Concord 2).

The pre-eminence of the TAC is also in evidence as displayed by the fact that the member-states are: “Reiterating that the Treaty of Amity and Cooperation in Southeast Asia (TAC) is an effective code of conduct for relations among governments and peoples” (ASEAN Concord 2). This is further emphasized in the part of the Declaration of ASEAN Concord II in which the ASEAN member-states issue ten

declarations. Declaration 5 states that TAC is “the key code of conduct governing relations between states and a diplomatic instrument for the promotion of peace and stability in the region”. Declaration 4 stresses the commitment of the ASEAN member-states to “resolve to settle long-standing disputes through peaceful means” (ASEAN Concord 2).

The Declaration of ASEAN Concord II also includes a part in which the member-states adopt a framework to achieve a: “dynamic, cohesive, resilient and integrated ASEAN community”. To achieve this overarching goal the Association will strive to create an ‘ASEAN Security Community’ (ASC), an ‘ASEAN Economic Community’ (AEC), and, an ‘ASEAN Socio-Cultural Community’ (ASSC) (ASEAN Concord 2).

In the field of conflict management the ASC is the most relevant to examine and it contains twelve points. Point 3 relates to the fact that ASEAN shall continue to promote regional solidarity and cooperation and in this context it is stated that “member countries shall exercise their rights to lead their national existence free from outside interference in the internal affairs.”⁵ Point 4 also relates to this dimension but is more general and it states that

The ASEAN Security Community shall abide by the UN Charter and other principles of international law and uphold ASEAN's principles of non-interference, consensus based decision-making, national and regional resilience, respect for national sovereignty, the renunciation of the threat or use of force, and peaceful settlement of differences and disputes (ASEAN Concord 2).

Of interest is that Point 7 is devoted exclusively to the High Council and it is stated that “the High Council of the TAC shall be the important component in ASEAN Security Community since it reflects ASEAN’s commitment to resolve all differences, disputes and conflicts peacefully” (ASEAN Concord 2).

The Declaration also seeks to be innovative or at least forward looking in setting the stage for the further development of its conflict management mechanisms. This can evidently be seen in Point 12 that states that “ASEAN shall explore innovative ways to increase its security and establish modalities for the ASEAN Security Community which include, inter alia, the following elements: norms-setting, conflict prevention, approaches to conflict resolution, and post-conflict peace building” (ASEAN Concord 2).

⁵ Outside interference should be understood in the broad sense both by other member-states of ASEAN and other powers.

The ASEAN Security Community Plan of Action⁶

The process aiming at establishing the ASC was reinforced at the 10th ASEAN Summit held in Vientiane in late November 2004 when ASEAN adopted the ASEAN Security Community Plan of Action. This Plan outlines that the ASC should be based on “shared norms and rules of good conduct in inter-state relations; effective conflict prevention and resolution mechanisms; and post-conflict peace building activities.” It also clarifies that the ASC is to promote an “ASEAN-wide political security and cooperation in consonance with the ASEAN Vision 2020 rather than a defence pact, military alliance or a joint foreign policy.” The Plan also stresses that the ASC process shall be “progressive” and that it shall be guided by

well-established principles of non-interference, consensus based decision-making, national and regional resilience, respect for the national sovereignty, the renunciation of the threat or the use of force, and peaceful settlement of differences and disputes which has served as the foundation of ASEAN cooperation (ASEAN Security).

Thus, the Plan clearly displays a high degree of continuity and adherence to established principles for inter-state collaboration in ASEAN. It also states that ASEAN shall not only strengthen existing “initiatives” but also launch new ones and set “appropriate implementation frameworks” (ASEAN Security).

The Plan includes seven sections; I. Political Development, II. Shaping and Sharing of Norms, III. Conflict Prevention, IV. Conflict Resolution, V. Post-conflict Peace Building, VI. Implementing Mechanisms, and, VII. Areas of Activities.

In the section on shaping norms it is stated that the aim is to achieve a standard of “common adherence to norms of good conduct among the members of the ASEAN Community” and in any norm setting activity the following principles must be adhered to:

1. *Non-alignment,*
2. *Fostering of peace-oriented attitudes of ASEAN Member Countries;*
3. *Conflict Resolution through non-violent means;*
4. *Renunciation of nuclear weapons and other weapons of mass destruction and avoidance of arms race in Southeast Asia; and*
5. *Renunciation of the threat or the use of force (ASEAN Security).*

⁶ Unless otherwise stated all factual information in this section is derived from the text of ‘ASEAN Security Community Plan of Action’ (ASEAN Security) and ‘ANNEX for ASEAN Security Community Plan of Action’ (ASEAN Security Annex).

In the field of conflict prevention it is stated that the objectives of conflict prevention shall be:

1. *To strengthen confidence and trust within the Community;*
2. *To mitigate tensions and prevent disputes from arising between or among member countries as well as between member-countries and non-ASEAN countries; and*
3. *To prevent the escalation of existing disputes (ASEAN Security).*

In terms of conflict resolution the Plan stresses that disputes and conflicts involving ASEAN members shall be resolved in a “peaceful way”. Of great relevance in the context of regional mechanisms is the following:

While continuing to use national, bilateral and international mechanisms, ASEAN Member Countries shall endeavour to use the existing regional dispute settlement mechanisms in the political and security areas and work towards innovative modalities including arrangements to maintain regional peace and security so as to better serve theirs as well as collective interests of all members for peace and security (ASEAN Security).

In the field of post-conflict peace building the Plan states that the aim is to create conditions for sustainable peace in conflict affected areas and to prevent the re-emergence of conflicts. In the context of implementing mechanisms the primacy of the AMM in taking the necessary follow-up measures to implement the Plan of Action is emphasized. Finally, the areas of activities refer to the ‘Annex’ of the plan and that ASEAN shall “endeavour to work towards the implementation of the areas of activities” (ASEAN Security).

This Annex deserves some attention in relation to the areas highlighted above. In relation to shaping and sharing norms the following measures are identified: the strengthening of the “TAC regime”, working towards the development of an “ASEAN Charter” to reaffirm the goals and principles of ASEAN in inter-state relations, to resolve outstanding issues to ensure an early signing to the Protocol of the Southeast Asian Nuclear Weapon-Free Zone (SEANWFZ) Treaty by “Nuclear Weapon States”, to establish an “ASEAN Treaty on Mutual Legal Assistance (MAL) Agreement”, to establish an “ASEAN Extradition Treaty” – as envisaged in the ‘Declaration of ASEAN Concord’ of 1976, to ensure the implementation of the ‘Declaration on the Conduct of the parties in the South China Sea’ (DOC)⁷, and the establishment of an “ASEAN

⁷ The measures outlined are to establish an ‘ASEAN-China Working Group on the Implementation of the DOC’, to establish a review mechanism on the implementation of the DOC; and to work towards ‘the adoption of the code of

Convention on Counter Terrorism” (ASEAN Security Annex).

In relation to conflict prevention the following measures are outlined: strengthening confidence building measures including working towards convening an annual “ASEAN Defence Ministers Meeting (ADMM)”, strengthening preventive measures, strengthening the ASEAN Regional Forum (ARF) in support of the ASC, enhancing co-operation on non-traditional security issues, strengthening “efforts in maintaining respect for territorial integrity sovereignty and unity of member countries”, and, strengthening co-operation to address “threats and challenges” posed by separatism (ASEAN Security Annex).

In relation to conflict resolution the first measure relates to the strengthening disputes settlement mechanisms by:

- a. *The use of existing modes of pacific settlement of disputes such as negotiations and consultations, good offices, conciliation and mediation by all ASEAN Member Countries, or use of the High Council of the TAC as a preferred option; and*
- b. *If the High Council so requires, it may establish on an ad hoc basis an Experts Advisory Committee (EAC) or an Eminent Persons Group (EPG), which may extend assistance to the High Council to provide advice or counsel on the settlement of disputes upon request, in accordance with the Rules of Procedure of the High Council of TAC (ASEAN Security Annex).*

Furthermore, measures to develop regional co-operation for the maintenance of peace and stability are outlined as well as developing support initiatives such as the possible establishment of an “ASEAN Institute for Peace and Reconciliation” (ASEAN Security Annex).

In relation to post-conflict peace building, the Annex calls for strengthening of ASEAN humanitarian assistance, for the development of co-operation in post conflict reconstruction and rehabilitation, and, for the establishment of a mechanism to mobilise resources (ASEAN Security Annex).

***The Charter of the Association of Southeast Asian Nations*⁸**

The Charter of the Association of Southeast Asian Nations (ASEAN Charter) – adopted on November 20, 2007, in Singapore and in force since December 2008 – reaffirms a

Conduct in the South China Sea (COC)’ (ASEAN Security Annex).

⁸ Unless otherwise stated all factual information in this section is derived from the text of ‘The Charter of the Association of Southeast Asian Nations’ (ASEAN Charter).

number of fundamental principles governing inter-state relations among its member-states. In paragraph 7 of the Preamble it is stated: “Respecting the fundamental importance of amity and cooperation, and the principles of sovereignty, equality, territorial integrity, non-interference, consensus and unity in diversity” (ASEAN Charter, p. 2).

The importance of peace is also evident as stated in paragraph 6 of the Preamble and also explicitly outlined in Article 1 ‘Purposes’ of Chapter I ‘Purposes and Principles’ which states that the first purpose of ASEAN is “to maintain and enhance peace, security and stability and further strengthen peace-oriented values in the region” (ASEAN Charter, p. 3).

In Article 2 ‘Principles’ both non-interference, peace, and dispute settlement are highlighted as displayed by the following principles that ASEAN member-states should “act in accordance with”:

- (a) *respect for the independence, sovereignty, equality, territorial integrity and national identity of all ASEAN Member States;*
- (b) *shared commitment and collective responsibility in enhancing regional peace, security and prosperity;*
- (c) *renunciation of aggression and the threat or use of force or other actions in any manner inconsistent with international law;*
- (d) *reliance of peaceful settlement of dispute;*
- (e) *non-interference in the internal affairs of ASEAN member-states;*
- (f) *respect for the right of every Member State to lead its national existence free from external interference, subversion and coercion*
- [...]
- (k) *abstention from participation in any policy or activity, including the use of its territory, pursued by any ASEAN Member State or non-ASEAN State or any non-State actor, which threatens the sovereignty, territorial integrity or political and economic stability of ASEAN Member States* (ASEAN Charter, pp. 5-6).

The non-interference dimension is extensive and explicit in these principles. The strict adherence to the provisions of the Charter of the United Nations relating to the prohibition of the “threat or use of force” in inter-state relations is also notable.

In the context of settlement of disputes Chapter VIII is of direct relevance as it deals with ‘Settlement of Disputes’ and it encompasses seven articles – 22 to 28. The chapter deals both with disputes relating to “specific ASEAN instruments” and with other kind of disputes. The ‘General Principles’ in Article 22 stresses that the ASEAN member-states “shall endeavour to resolve peacefully all disputes in a timely manner” (ASEAN Charter: 23). The role of ASEAN is to “maintain and establish dispute

settlement mechanisms in all fields of ASEAN Cooperation” (ASEAN Charter, p. 23). In Article 24 – ‘Dispute Settlement Mechanisms in Specific Instruments’ paragraph 2 states that “disputes which do not concern the interpretation or application of any ASEAN instrument shall be resolved peacefully in accordance with the Treaty of Amity and Cooperation in Southeast Asia and its rule of procedure” (ASEAN Charter, pp. 23-24).

In Article 24 the issue of “unresolved disputes” is addressed and it is stated that if a dispute is not “resolved” after the application of the “preceding provisions of this Chapter” then it “shall be referred to the ASEAN Summit, for its decision” (ASEAN Charter, p. 24).

In relation to the ASC it is stated in Preamble paragraph 11 of the ASEAN Charter that the Association is “committed to intensifying community building through enhanced regional cooperation and integration, in particular by establishing the ASEAN Community comprising the ASEAN Security Community” (ASEAN Charter, p. 2).⁹

Conflict management in ASEAN

The examination of the conflict management dimension in practice is divided into two parts the first relating to the establishment of the Association in the 1960s and the second relating to the conditions and developments in an expanded ASEAN, i.e. developments since the mid-1990s – Vietnam joined in 1995, Laos and Myanmar in 1997, and Cambodia in 1999.¹⁰

Conflict management in the formation of ASEAN¹¹

The creation of ASEAN was the result of efforts by some South-East Asian states to establish an association that could provide the framework for successful management

9 The ASEAN Charter refers to the “ASEAN Political-Security Community Council” in Paragraph 1, Article 9 ‘ASEAN Community Councils’, Chapter IV ‘Organs’ (ASEAN Charter, p. 12). In accordance with ASEAN Political-Security Community Blueprint the relationship between the ASC and the APSC is as follows: “The APSC Blueprint builds on the ASEAN Security Community Plan of Action.” It also states: “The ASEAN Security Community Plan of Action is a principled document, laying out the activities needed to realise the objectives of the” APSC (APSC, p. 1).

10 For details on the expansion process of ASEAN and the main factors behind it see Amer (1999, pp. 1031-1048).

11 For a more extensive analysis see Amer (1998, pp. 34-35).

of disputes among them. The creation of ASEAN can be seen as determined by the desire of its original member-states, i.e. Indonesia, Malaysia, the Philippines, Singapore, and Thailand,¹² to handle existing and potential inter-state disputes through peaceful measures and minimise the risk of militarized conflicts. There was in other words a desire to secure a peaceful and co-operative environment in the sub-region of South-East Asia and this was the decisively contributing factor to the creation of ASEAN. Thus, ASEAN was from the outset an Association for conflict management.

Empirical evidence lends support to this interpretation of the process of formation of ASEAN. During the first half of the 1960s deep conflicts erupted between Indonesia and Malaysia and between Malaysia and the Philippines, respectively. Furthermore, the then existing sub-regional organisations in South-East Asia – the Association of Southeast Asia (ASA) created in 1961 with the then Malaya, the Philippines and Thailand as members, and, Maphilindo created in 1963 with Malaysia, the Philippines and Indonesia as members – failed to contain the two conflict situations.

The limitations and shortcomings of ASA and Maphilindo clearly indicated that there was a need for a broader and more efficient association as a vehicle for regional co-operation and conflict management. To bring about a broader membership base in the new association all the major non-socialist countries in South-East Asia, except the Republic of Vietnam (South), established ASEAN together with Singapore in 1967.

Conflict management in an expanded ASEAN¹³

If conflict management within ASEAN is examined from the perspective of the prevention of inter-state military conflicts the track record of ASEAN is impressive since no dispute has led to such conflicts between the original member-states since 1967. In fact earlier research suggests a high degree of success in managing conflicts between the original member-states of ASEAN.¹⁴ However, this does not imply that all the disputes have been resolved or that disputes in general do not occur.

On a less positive note in the midst of the Asian Financial Crisis in the late 1990s disputes among some of the ASEAN-members re-emerged.¹⁵ One example was the

¹² Brunei Darussalam was admitted as the sixth member of ASEAN in 1983.

¹³ This section draws on the approach used in Amer (2003, pp. 111-131).

¹⁴ For a more detailed argumentation along this line see Amer (1998, p. 41).

¹⁵ For a broad overview of bilateral tensions within the Association with a focus on the original five members and

increased tension between Malaysia and Singapore in 1998 which centred over three main issues namely, water, Malaysian workers' savings and railway land, most of which have been in evidence for years without causing such a level of tension.¹⁶ It seems likely that this heightened tension had its roots in national mobilisation in the face of the economic crisis on both sides rather than the issues as such.

The expansion of ASEAN membership in the 1990s brought additional disputes into the Association, thus further complicating the task of managing them. Among the disputes involving the new member-states, some have been settled while others remain unsettled. For example the level of tension relating to the unsettled border disputes varies considerably. In terms of conflict management strategy the member-states of ASEAN have displayed a preference for bilateral talks and dialogue on the disputes with other members of the Association.¹⁷ However, in the 1990s Indonesia and Malaysia agreed to refer the sovereignty disputes over Pulau Sipadan and Pulau Ligitan to the International Court of Justice (ICJ) and Malaysia and Singapore did likewise with regard to the sovereignty dispute over Pedra Branca/Pulau Batu Puteh.¹⁸ This displays a willingness among some ASEAN members to seek international arbitration when bilateral efforts to resolve disputes are not sufficient to bring about a solution to the disputes.

The bilateral efforts to manage and settle disputes can be facilitated and/or supported by the mechanisms for conflict management created by ASEAN. This relates to ASEAN's role as facilitator rather than as an active third-party mediator in the disputes. However, it does not preclude that the role of ASEAN itself can be enhanced as long as it is within the limits set by the ASEAN framework for conflict management. There is also a need for a political consensus among the parties to the disputes that ASEAN should play such a role.

In this context it is important to assess the possible role that the ASEAN framework for conflict management can play in the context of the disputes among its member-states. The question is how to enhance the framework's relevance in meeting the challenge of disputes. The first step in such a process would be to establish the

Brunei Darussalam see Ganesan (1999).

16 For a broad overview of relations between Malaysia and Singapore see Ganesan (1998, pp. 21-36).

17 This is most clearly displayed in relation to the way in which border disputes among the member-states are managed. For studies on these issues see Amer (1998, pp. 33-56; 2000, pp. 30-60; 2001-2002, pp. 81-96).

18 For details see Amer (1998, p. 43; 2000, pp. 43-44; 2001-2002, p. 85 and pp. 94-95).

High Council. This has proven to be a difficult task as it took 25 years after the adoption of the TAC before ASEAN managed to adopt the Rules of Procedure of the High Council of the Treaty of Amity and Cooperation in Southeast Asia in 2001. This is an important step towards the possible establishment of the High Council and it was the most important formal development relating to the ASEAN framework for conflict management since the expansion of membership in the 1990s. The importance of the High Council has been reaffirmed in the provisions aiming at establishing the ASC both in the Declaration of ASEAN Concord II and in the ASEAN Security Community Plan of Action. This plan calls on the ASEAN member-states to “endeavour to use existing regional dispute mechanisms and processes” and in its ‘Annex’ the member-states are urged to “use the High Council of the TAC as a preferred option” (ASEAN Security Annex).

The long period needed in order to reach an agreement on such rules indicates that the informal and formal political co-operation among the ASEAN-members could be enhanced in order to remove the lingering feelings of suspicion about the intentions of other members of the Association. Another factor that has to be taken into consideration is that a High Council created on the basis of the provisions of the TAC could have considerable power through decisions it could make relating to disputes. Making the High Council a decision-making body would increase the degree of institutionalisation within ASEAN and this would be a step away from the more informal approach preferred within the Association. An additional dimension is concerns about the possible multilateralization of bilateral disputes. This would not be an attractive scenario for member-states that are involved in disputes with other ASEAN-members. Or for states which would fear that the opposing party to a dispute has a higher degree of diplomatic influence or leverage within the Association.

Reverting back to the adoption of the rules of procedure for the High Council it can be said that the agreement on such rules indicate that the ASEAN member-states are committed to the establishment of the Council and to strengthen the regional conflict management mechanisms. This has been reaffirmed in the context of the provisions aiming at establishing the ASC contained in the Declaration of ASEAN Concord II and in the ASEAN Security Community Plan of Action.

By adopting the rules of procedure the ASEAN member-states have mitigated the earlier fears among some of them with regard to the potentially considerable powers

of the High Council and about the possible negative impact of the multilateralization of a dispute. As stipulated in the rules if any party to a dispute does not agree on the application of the High Council's procedure then it cannot proceed further on the matter. Thus, the High Council can only initiate dispute settlement procedure if all parties to a dispute agree to it. Furthermore, at least one party to a dispute must bring the matter to the High Council. Finally, since all the member-states of ASEAN are entitled to one representative in the High Council no decisions can be taken against the will of any given party to a dispute, that is any given member of the Association. In fact this amounts to a veto power of any member-state involved in a dispute. In the current context the de facto veto power of a party to a dispute will be retained. Even if ASEAN would adopt a model of consensus minus one principle in other fields it is highly unlikely that it will apply in the settlement on inter-state disputes.

Through the adoption of these rules of procedure ASEAN has brought about conducive conditions for the establishment and activation of the High Council. A Council to which the member-states could turn for assistance in resolving border disputes if negotiations between the parties to the disputes fail. Such a High Council, if established, may be attractive as an alternative to the ICJ. This should not be understood as an argument implying that parties to a dispute should not bring such disputes to the ICJ no matter the circumstances. On the contrary, the ICJ can still be used as an alternative if the bilateral and regional conflict management approaches and efforts fail to lead to settlement of a dispute that is acceptable to the parties to the dispute.

The adoption of the rules of procedure implies that the member-states of ASEAN have established regional mechanisms that can be utilized for managing disputes between the member-states if bilateral and/or multilateral efforts by the parties to a dispute are not adequate or sufficient to manage and/or resolve the dispute. Whether or not the High Council will be activated and be allowed to assume such a role will depend on the willingness and readiness of the member-states of ASEAN to bring disputed issues to such a regional body. The rules of procedure ensure that the Council cannot be used against a member-state. The latter was most probably a necessary condition in order to secure the adoption the rules and it is likely to be a key factor in enabling a future activation of the Council itself. Only when it will

be established will it be possible to assess how effectively and how often the High Council will be used by the ASEAN member-states in dealing with inter-state disputes affecting them.

In this context it is necessary to clarify that ASEAN is not intended to formally act as a third-party mediator in the disputes involving its member-states unless it is ascribed to do so or asked to do so by the member-states. Instead the Association is intended to serve as a vehicle to promote better relations among its member-states. This is done by creating conducive conditions for increased interaction through the overall co-operation carried out under the ASEAN-umbrella. Another role that ASEAN can play is through the formulation and adoption of mechanisms, which can be utilized by the member-states to manage their disputes. ASEAN can also establish principles for how its member-states should behave towards each other and this has been done through the Declaration of ASEAN Concord and the TAC of 1976 and the Declaration of ASEAN Concord II of 2003. These mechanisms are also in evidence in the ASEAN Security Plan of Action and in its Annex. Also of relevance is the strong emphasis put on dispute settlement in the ASEAN Charter.

This implies that in order to achieve peace and stability in the region the member-states of ASEAN must act in such a way as to peacefully manage the existing and potential inter-state disputes among them. Consequently, failure to do so can be attributed to the member-states involved in the disputes and not to the Association as such. Furthermore, ASEAN can urge its member-states to seek peaceful solutions to such disputes, but it cannot force them nor directly intervene to try and halt a dispute unless the parties to the dispute ask ASEAN to intervene in such a manner.

Both the Declaration of ASEAN Concord II with its provisions for the establishment of an ASC and the more detailed ASEAN Security Community Plan of Action reaffirm and expand the conflict management mechanisms available to the member-states of ASEAN in dealing with inter-state disputes. In doing so they serve both as vehicles for continuity and innovation in field of conflict management. However, as with other ASEAN agreements the efficiency of the ASC will depend on the policies and actions of the member-states. The same applies to the future utilisation of the regional mechanisms for conflict management.¹⁹

¹⁹ For an analysis of the ASC carried out after the adoption of the Declaration of ASEAN Concord II but before the adoption of ASEAN Security Community Plan of Action see Severino (2004).

The ASEAN Charter not only reiterates the continued relevance of prior documents but also puts strong emphasis on the peaceful settlement of disputes among the member-states of ASEAN.

Concluding remarks

As observed above, in order to properly understand and assess what ASEAN does and could possibly do in terms of conflict management it is necessary to clarify that ASEAN is not intended to formally act as a third-party mediator in the disputes involving its member-states unless it is ascribed to do so or asked to do so by the member-states. Instead the Association is intended to serve as a vehicle to promote better relations among its member-states. This is done by creating conducive conditions for increased interaction through the overall co-operation carried out under the ASEAN-umbrella. Another role that ASEAN can play is through the formulation and adoption of mechanisms, which can be utilized by the member-states to manage their disputes. ASEAN can also establish principles for how its member-states should behave towards each other and this has been done through the Declaration of ASEAN Concord, the TAC of 1976 as well as the Declaration of ASEAN Concord II of 2003 and through the ASEAN Charter adopted in 2007. The envisaged ASC will further reinforce both the principles and mechanisms and strive to develop new ones.

Another important aspect is that the principle of non-interference in the internal affairs of other states prevents member-states from intervening in internal conflicts in other member-states. This implies that only if a member-state requests assistance or the intervention of ASEAN, selected member-states and/or individual member-states, can they intervene. The nature of such intervention can differ depending on the request and on the role that ASEAN or the member-states are willing to provide. It can also be noted that the ASEAN approach to conflict management is geared towards the inter-state level and not the intra-state context. This can best be understood by taking into consideration the context in which ASEAN was established and the paramount importance for the then leaderships to safeguard their political survival in the face of major internal challenges.

This implies that in order to achieve peace and stability in South-East Asia the member-states of ASEAN must act in such a way as to peacefully manage the existing

and potential inter-state disputes among them. Consequently, failure to manage inter-state disputes among the member-states of ASEAN can be attributed to the states involved in the disputes and not to the Association as such. Furthermore, ASEAN can urge its member-states to seek peaceful solutions to such disputes, but it cannot force them nor directly intervene to try and halt a dispute unless the parties to the dispute ask ASEAN to intervene in such a manner. The same applies to conflict situations within member-states, i.e. ASEAN can only act if so requested by the member-state affected by the conflict.

The relevance of the regional mechanisms for conflict management as developed and formulated through collaboration within ASEAN would be considerably enhanced if the member-states of ASEAN would more actively seek to utilise them when managing and settling disputes. The fact that the High Council has yet to be activated and that no dispute has been brought to it indicates that regional mechanisms for dispute settlement are – after more than 40 years – not yet the preferred option when the member-states fail to reach a bilateral agreement in a dispute situation. To make regional mechanisms the preferred option would be a major boost to ASEAN efforts aiming to strengthen dispute settlement in the region and a key step towards establishing an ASC and also in establishing the ASEAN Community.

The above overview and analysis have displayed that ASEAN puts considerable efforts into promoting the peaceful settlement of disputes among its member-states. The approach of ASEAN has been to adopt principles and to create mechanisms that are available to the member-states when dealing with disputes. Thus far ASEAN has not assumed the role of directly intervening in such disputes.

What then can be said about the role of the ASEAN Charter? The role is not one of being innovative, but instead it reaffirms the importance of conflict management through peaceful settlement of disputes. It also reaffirms the established principles and mechanisms established in earlier ASEAN documents, in particular in the TAC. The continued importance of the latter is in evidence in the provisions of the ASEAN Charter. As noted above, the Charter puts strong emphasis on peaceful settlement of disputes among the ASEAN-members. Thus, the ASEAN Charter both reaffirms and assures continuity in the conflict management approach of the Association.

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